IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.1058 OF 2003

In

WRIT PETITION NO.2285 OF 2001

1. Shri V. Venugopal
   B-001, Jimmy Park No.1
   Sector 17, Nerul,
   New Mumbai-400 706.

2. Smt.Lila Advani
   D-14, Juhu Park
   Opp. Iskon, Juhu Road,
   Mumbai-400 049.

3. Shri H. Kanchan
   G/407, Panchvan Complex
   I.C. Colony, Borivali (W)
   Mumbai-400 103.

4. Shri D.S.Kotian
   44-A Kailash, M.G. Road
   Dhanukar Wadi, Kandivili (W)
   Mumbai-400 067.

5. Shri R.V. Satham
   8 Vinayak, Gandhi Nagar
   Bandra (E), Mumbai-400 051.

6. Shri G.K. Sawant
   204, Prabhat Society
   Prabhadevi, Mumbai-400 025.

7. Shri V.T.Sequeira
   C-4/32, Mahindra Nagar
   Malad (E), Mumbai-400 092.

8. Smt.Meena Satham
   9 Jyoti CHS
   55, Dhanukar Wadi
   Gokhale Road, Mumbai-400 067.

9. Smt.Irine Feleiro
   Sidh Ratnakar Hsg.Soc.

Prabha Nagar, Nr. Tata Press
P. Balu Marg, Prabhadevi
Mumbai-400 025.

10. Shri V.D. Kanchan
403, OM Sahakar C.H.S.I
Rayanigram, Simpoli Road,
Borivali (W), Mumbai-400 103.

11. Shri William D'Silva
A/3, Shahadhara (RBI Colony)
Dadabhai Cross Road
Vile Parle (W), Mumbai.

12. Shri M.C. Jambotkar
7/16, Piramal CHSL, Pandit
Din Dayal Marg
Vishnunagar
Dombivali (W) 421 202. : Appellants
(Orig.Respondents)

V/s.

Siemens Limited
A Company incorporated under the
Companies Act, 1956 with its
Head Office at 130 Pandurang
Bhudkar Marg, Worli, Mumbai-18. : Respondent
(Orig.Petitioner)

...

Mr.R.D.Bhat for the appellants.
Mr.P.K.Rele with Mr.V.N.Tayade and Mr.R.P.Rele i/b.
Mr.Piyush Shah for the respondent.

...

CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATE : NOVEMBER 24, 2006.

ORAL JUDGEMENT (Per R.M.Lodha,J.)

1. In the complaint filed by V. Venugopal on his own behalf and on behalf of 11 other employees under item nos.5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "MRTU & PULP Act, 1971"), the Industrial Court by its order dated 4.7.2001 directed

Siemens Limited (for short the "employer") to pay pension at the rate of Rs.188/- per month from the date the said 12 employees attained the age of 60 years. The employees challenged the order of the Industrial Court dated 4.7.2001 by filing the Writ Petition before this Court. The learned single Judge held that the employees were not entitled to pension under the scheme entitled "Siemens Employees' Superannuation Fund" and, consequently, by judgement dated 24.4.2003, set aside the order of the Industrial Court dated 4.7.2001. The judgement of the learned single Judge is impugned by the employees in this appeal.

2. The following facts are not in dispute:-

(a) That pension scheme entitled "Siemens Employees' Superannuation Fund" came into force with effect from 1.10.1992.

(b) All the 12 employees resigned (by agreement/consent of the employer) between the period May 1994 and November 1995.

(c) None of the employees had completed five years continuous service, though they had completed ten years of service.

3. The question that arises for consideration by us in this appeal is whether, in the back drop of the admitted afore-noted facts, the employees are entitled to the benefit of the pension scheme (superannuation fund).

4. Clause 4 thereof provides that the object of the fund is to provide superannuation benefits to the employees as per the rules mentioned in this scheme. Clause 16 is being reproduced as it is by us since the dispute centres around this clause:-

> "16. Every employee shall superannuate on attaining the age of 60 years. An employee, may, with the consent of the company resign from service of the company before attaining the age of 60 years, if there be no cause existing at that justifying a dismissal."

5. Clause 19 provides eligibility and qualification for pension under the scheme. That clause reads thus:-

> "19. No pension shall be payable except in the event provided as under:
>
> 1. Benefits on superannuation:
>
> a) Subject to the provisions of sub-rule (b) below, a member on superannuation will be entitled to superannuation benefit commencing from the month following superannuation at the rate of 1% of Rs.3500/- per year of contributory service till life, with return of capital to the nominee on the pensioner’s death.

b) To qualify for the benefit on superannuation a member shall have completed a minimum 10 years of continuous service including a contributory service of 5 years from the date of his joining the scheme.

c) For employees who are on roll of the company at the effective date of the scheme and are superannuating will receive minimum of Rs.188/- with return of capital to the nominee after the death of a pensioner.

d) Clause (b) will not be applicable to those employees who are on roll of the company at the time of introduction of the scheme and superannuating.

2. Benefits on death or total permanent disablement while in service:

On death or total permanent disablement of a member while in service, the beneficiary will be entitled to benefit at the rate of 1% of Rs.3500/- per year of contributory service of the member of Rs.500/- p.m. in case of death and Rs.1000/- p.m. in case of total permanent disability whichever is higher. The benefit being payable from the month following the date of the death/total permanent disablement of the member till the life time of the beneficiary, with return of capital to the nominee.

3. Benefits on Separation:-

On separation other than superannuation from service of a member by his registration/termination after completing a minimum of ten years of eligible service including a contributory service of five years from the date of his joining the scheme, the benefit to that member shall be in accordance with rule 19(1)(a) above payable from the month following the date on which the member would have superannuated had he continued in the service of the company i.e. 60 years of age.

4. .....
5. ....."

6. Returning now to clause 16, it would be seen that

superannuation age provided therein is 60 years as it says that every employee shall superannuate on attaining the age of 60 years. The next sentence therein that an employee may, with the consent of the employer, resign from the service of the employer before attaining the age of 60 years, if there is no cause existing at that justifying a dismissal, in our view, gives liberty to the employee to resign from the service of the company before attaining the age of 60 years with the consent of the employer. Nothing more can be read in that expression. Since the employees resigned from service, obviously as permitted under the pension rules with the consent of the employer, they cannot be said to have superannuated as the word "superannuation" is understood. We are benefited by the observations of the Supreme Court in the case of Reserve Bank of India v. Cecil Dennis Solomon, 2004 (100) FLR 441, wherein the Supreme Court stated that in service jurisprudence, the expressions ‘superannuation’, ‘voluntary retirement’, ‘compulsory retirement’ and ‘resignation’ convey different connotations. Voluntary retirement and resignation involve voluntary acts on the part of the employee to leave service. Though both involve voluntary acts, they operate differently. One of the basic distinctions is that in case of resignation, it can be tendered at any time; but in the case of voluntary retirement, it can

only be sought for after rendering prescribed period of qualifying service. The Supreme Court further held that in the case of resignation, normally, retiral benefits are denied but in the case of voluntary retirement, the same is not denied. Clause 16 does not even artificially compare the resignation by an employee with the consent of the employer before attaining the age of 60 years with that of superannuation. The appeal must fail on this count alone.

7. Even if we accept the contention of the appellants that clause 16 artificially brings in the separation of service by superannuation on resignation of an employee with the consent of the employer before attaining the age of 60 years, by virtue of clause 16, in view of the admitted fact that the employees had not complected contributory service of five years from the date of joining the scheme, the appellants cannot be held to be qualified for the benefit of superannuation. Clause 19(1)(b) as afore-quoted provides that to qualify for the benefit on superannuation, an employee must have completed minimum of ten years of continuous service including a contributory service of five years from the date of his joining the scheme. That none of the employees is qualified under clause 19(1)(b) is not in dispute. The counsel for the appellants, however, placed

heavy reliance on clause 19(1)(d) which provides that clause (b) will not be applicable to those employees who are on the roll of the company at the introduction of the scheme and superannuating. In our considered view, clause (d) is only applicable to a situation where the employees are on the rolls of the employer at the time of introduction of the scheme and they were superannuating also at the time of introduction of the scheme; thereby these persons were not to be considered to be qualified for the benefit of superannuation as provided in clause (b). We fail to understand how clause (d) can be applied to the facts of the present case since admittedly the concerned employees were not superannuating at the time of introduction of the scheme. Admittedly, they resigned from service much after the introduction of the scheme with effect from 1.10.1992. Thus, the employees are not entitled to the benefit of the pension scheme entitled "Siemens Employees' Superannuation Fund". The grant of the pension benefit by the Industrial Court, in the circumstances, was grossly erroneous and, therefore, no interference is called for in the impugned order whereby the single Judge set aside the order of the Industrial Court.

8. Appeal has no merit and is dismissed with no order as to costs.

Sd/-

R.M. LODHA, J.

Sd/-

S.A. BOBDE, J.